

The Applicant elects with traverse Species 5 shown in Fig. 20. The claims reading on Species 5 include Claims 1-3 and 40.

The Applicant, however, respectfully requests that the Examiner reconsider its restriction requirement. The species election requirement is traversed on the following grounds.

Species 6-9 (claims 4-32) should be searched and examined with Species 5. Species 5 (Fig. 20) discloses the system and method for detecting a blowout precursor using optical data by one of four analytical tools—analyzing raw data (Species 6, Fig. 21), applying spectral analysis to the optical data (Species 7, Fig. 25), applying statistical analysis on the optical data (Species 8, Fig. 28) and applying wavelet analysis on the optical data (Species 9, Fig. 35). Figs. 21, 25, 28, and 35 disclose the individual steps for performing the method of Fig. 20. Accordingly, Species 6-9 as identified by the Examiner are included within the disclosure of Species 5 and therefore should be searched and examined together.

Requirement of Election of Species Is Improper

A species election requirement in this application is unwarranted. MPEP 808.01(a) states that “[a] requirement for restriction is permissible if there is a patentable difference between the species as claimed and there would be a serious burden on the examiner if restriction is not required.” (emphasis added). To show a serious burden, the examiner must show one of the following: (a) separate classification thereof; (b) a separate status in the art when they are classifiable together; and (c) a different field of search. Respectfully, the Examiner cannot show that this invention should be restricted based on any of these criteria.

First, “a separate classification thereof” requires a showing that each invention has attained recognition in the art as a separate subject for inventive effort and also a separate field of

search. Here, Species 6-9 are subsumed within the disclosure of Species 5. Search for prior art and examination of the claims for species 5 and 6-9 will necessarily overlap. Examination of Species 5 will require a search for Species 6-9. Thus, Species 5-9 cannot be recognized as separate subject for inventive effort in the art and cannot require a separate field of search.

Second, “a separate status in the art when they are classifiable together” requires that each invention be shown to have formed a separate subject for inventive effort when the examiner shows a recognition of separate inventive effort by the inventors. Here, there is no showing of separate inventive steps by the inventors and even if shown, there is no showing that the species form a separate subject for inventive effort. Again, Species 6-9 are subsumed within the disclosure of Species 5 and do not form a separate subject for inventive effort and do not include separate inventive steps.

Third, “a different field of search” requires that searching for one invention is not likely to result in finding art pertinent to the other inventions. Again, here, the Examiner will necessarily search for Species 6-9 during his search for Species 5. Species 6-9 are methods disclosed within Fig. 20 and must be searched to examine Species 5, Fig. 20. Searching the disclosure in Species 6-9 will add no or at most minimal extra burden on the Examiner, but clearly not any “serious burden” as required by MPEP 808.01(a).

The Examiner cannot establish a burden to support his restriction requirement under MPEP 808.01(a) and 808.02. The MPEP directly supports Applicant’s position that the Examiner will not be seriously burdened if the restriction requirement is not required:

Where, however, the classification is the same and the field of search is the same and there is no clear indication of separate future classification and field of search, no reasons exist for dividing among independent or related inventions. MPEP 808.02.

Accordingly, no reason exists for dividing species 5-9 in the application. Applicant respectfully requests that Examiner search and examine claims 1-32 and 40 together in this application.

CONCLUSION

Should the Examiner have further questions or comments with respect to examination of this case, it is respectfully requested that the Examiner telephone the undersigned attorney at (404) 853-8138, so that further examination of this application can be expedited.

It is not believed that extensions of time or fees for net addition of claims are required, beyond those, which may otherwise be provided for in documents accompanying this paper. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 CFR §1.136(a), and any fee required therefor (including fees for net addition of claims) is hereby authorized to be charged to Deposit Account No. 19-5029.

Respectfully submitted,

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